

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

COREY BRACEY,)
)
Plaintiff,) Civil Action No. 11-217 Erie
)
v.)
GOVENOR RENDELL, et al.,)
)
Defendants.)

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on September 22, 2011 and was referred to United States Magistrate Judge Maureen P. Kelly for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [ECF No. 37], filed on November 8, 2012, recommended that the Motion to Dismiss filed by Defendants Fonder, Saavedra and MHM [ECF No. 21] be granted in part and denied in part. Specifically, it was recommended that the Motion to Dismiss be granted with respect to Plaintiff's Fourth, Eighth, and Fourteenth Amendment claims brought against Defendants Legget, Berrier, Walker, Collins and Hancock, and his Eighth Amendment claims that he was denied access to the law library, given a false misconduct and subjected to excessive force while incarcerated at SCI Fayette, as they are improperly joined under Rule 20 of the Federal Rules of Civil Procedure. To the extent the Defendants are asking that the entire case be dismissed with respect to these claims however, it was recommended that the Motion be denied.

It was further recommended that the Motion be denied with respect to Plaintiff's Eighth and/or Fourteenth Amendment claims brought against Defendants Beard, Meintel, Ellers, Gnall, Johnson, Coleman, Gates, Arnell, Zaken, Walker, Bustass,

Saavedra, Gallucci, Fonder, MHM, Bryant, Hall, Woods, Hannah, Biser, Whietzel, and Fisher, revolving around his alleged illegal confinement in the SMU at SCI Fayette, and improper RRL designation at SCI Fayette, SCI Albion and SCI Smithfield. As such, it was noted that Plaintiff's Eighth and/or Fourteenth Amendment claims asserted against Defendants Fonder, Saavedra, and MHM remained viable.

The parties were allowed fourteen (14) days from the date of service to file objections and Plaintiff filed objections on November 28, 2012. [ECF No. 38]. After de novo review of the documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 10th day of December, 2012, the Court adopts the Report and Recommendation [ECF No. 37] of Magistrate Judge Kelly, filed on November 8, 2012 as the opinion of the Court, with the exception of the Magistrate Judge's dismissal of the Fourth and Eighth Amendment claims brought against Defendants Legget, Berrier, and Walker that relate to Plaintiff's allegations that he was subjected to inhumane conditions when he was housed in an observation cell. At this point in the proceedings, it is unclear whether this claim is duplicative of the claim asserted against Defendant Legget in Bracey v. Price, C.A. 09-1662, ECF No. 35, ¶¶ 60, 90, or relates to a different time frame as claimed by the Plaintiff in his objections. This claim can be revisited on a more fully developed record under Rule 56 of the Federal Rules of Civil Procedure.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Maureen P. Kelly, U.S. Magistrate Judge